

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PASO ROBLES JOINT UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014010766

ORDER DENYING MOTION TO
DISMISS

On January 21, 2014 District filed its request for due process (complaint) in response to Student's request for an independent educational evaluation (IEE) at public expense.

On January 24, 2014, Student filed a motion to dismiss District's complaint on the ground that District failed to file for due process without unnecessary delay, as required by the Individual with Disabilities Education Act (IDEA). On January 24, 2014, District opposed the motion, maintaining that Student's motion is a summary judgment motion, and not appropriate to claims under the IDEA, and that it is factually inaccurate.

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), however, special education law does not provide for a summary judgment procedure.

Under certain conditions a parent is entitled to obtain an IEE of a child at public expense. (20 U.S.C. §1415(b)(1).) An IEE is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent may request an IEE at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense, unless the school district demonstrates at a due process hearing that the evaluation obtained by the parent does not meet its criteria. (34 C.F.R. §300.502(b)(2); Ed. Code, § 56329, subd. (c).) The school district may inquire as to the reason why the parent disagrees with the IEE, but the school district may not require the parent to provide an explanation, and may not unreasonably delay either providing the IEE at public expense or filing its due process complaint to demonstrate the appropriateness of its assessment. (34 C.F.R. § 300.502(b)(4).) Further, except for requiring that an IEE at public expense meet agency criteria regarding evaluations (to the extent those criteria are consistent with the

parent's right to an IEE), the district may not impose conditions or timelines related to obtaining an IEE at public expense. (34 C.F.R. § 300.503.)

Whether the length of time that has passed before a District initiates a due process hearing or provides the IEE at public expense constitutes "unnecessary delay" is a question of fact, based upon the circumstances of the particular case. (*J.P. v. Ripon Unified School District* (E.D. Cal. 2009) 2009 WL 1034993; 52 IDELR 125.) (*Ripon.*)

Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. In the motion, Student offers extensive "evidence" of District's unnecessarily delay, similar to what would be filed for a summary judgment motion. Student contends that he will be prejudiced by the District's presentation of evidence as to the appropriateness of its assessments because given its unnecessary delay, it is not entitled to have the appropriateness of its assessments considered by the ALJ. Student will not be prejudiced. Consistent with the IDEA, after considering all the evidence, including Student's, the ALJ shall determine whether District met its obligation to file without unnecessary delay, and then will determine whether the appropriateness of its assessments is relevant to a determination of whether District should provide an IEE at public expense. Student has an opportunity to present the same evidence and argument at hearing. Accordingly, the motion is denied.

IT IS SO ORDERED.

Dated: January 30, 2014

/s/

EILEEN COHN

Administrative Law Judge

Office of Administrative Hearings